



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

MAR - 5 2013

**VIA FIRST CLASS MAIL**

Mr. Shak Hill, Treasurer  
10<sup>th</sup> District Republican Congressional Committee  
PO Box 92  
McLean, VA 22101

RE: MUR 6547  
10<sup>th</sup> District Republican  
Congressional Committee

Dear Mr. Hill:

On April 4, 2012, the 10<sup>th</sup> District Republican Congressional Committee and you, as treasurer, were notified that the Federal Election Commission received a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On April 23, 2012, the Commission notified the Committee and you in your official capacity as treasurer of additional information from the complainant pertaining to the allegations in the complaint. On February 26, 2013, based upon the information contained in the complaint, and information provided by the Committee and you in your official capacity as treasurer, the Commission decided to dismiss the complaint and closed its file in this matter. Accordingly, the Commission closed its file in this matter on February 26, 2013.

If you have any questions, please contact Kim Collins the paralegal assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff S. Jordan".

Jeff S. Jordan  
Supervisory Attorney  
Complaints Examination &  
Legal Administration

Enclosure  
Factual and Legal Analysis

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# FEDERAL ELECTION COMMISSION

## FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: 10th District Republican Congressional Committee and Shak Hill as treasurer MUR 6547

### I. INTRODUCTION

This matter was generated by a complaint filed by Thomas J. Whitmore on April 2, 2012, alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act") and Commission regulations by the 10th District Republican Congressional Committee and Shak Hill in his official capacity as treasurer. It was scored as a low-rated matter under the Enforcement Priority System, a system by which the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue.

### II. FACTUAL AND LEGAL ANALYSIS

#### I. Factual Background

On April 2, 2012, Thomas J. Whitmore filed a complaint alleging that the 10th District Republican Congressional Committee and Shak Hill in his official capacity as treasurer (the "Committee") had not accurately reported disbursements made by the Committee in its monthly disclosure reports filed with the Federal Election Commission during the period between January 2011 and December 2011.<sup>1</sup> Compl. at 1. Whitmore stated that he had reviewed financial spreadsheets of the Committee's federal bank account provided to him by the Committee's treasurer, detailing the Committee's receipts and disbursements. He claimed to have found 91 disbursements recorded in the bank account spreadsheets that the Committee had not reported in

<sup>1</sup> Although Whitmore stated that he was "self-reporting" as a member of the Committee, there is no evidence that he served as treasurer or was otherwise an authorized official in the position to submit a *sua sponte* complaint on behalf of the Committee.

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1 its prior disclosure reports. *Id.* These financial spreadsheets were included with the Complaint  
2 and listed the Committee's monthly contributions and disbursements, with receipts ranging from  
3 \$20.00 to \$4,000, and expenditures ranging from \$0.23 to \$12,000. *Id.* at 2-21. Whitmore  
4 further alleged that the Committee's changes in treasurer had not been properly reported in 2010  
5 and 2011. Finally, Whitmore alleged that the Committee did not timely amend its reports to  
6 reflect that its bank account and address had changed. *Id.* at 1.

7 On April 23, 2012, Whitmore filed two supplements to the Complaint. The first, dated  
8 April 18, 2012 ("Supp. Compl.")<sup>2</sup>, reiterated the prior allegations of inaccurate reporting and  
9 claimed that Hill and the Committee's Chairman, Howie Lind, had not sufficiently provided the  
10 Committee members with requested documentation of all the Committee's financial activity in  
11 the manner in which they preferred.<sup>3</sup> Supp. Compl. at 1-2. The First Supplement also alleged  
12 that Whitmore's own personal contributions to the Committee had not been properly reported.  
13 Whitmore claimed that his contributions were, at first, missing entirely from the reports and  
14 later, in amended reports, inaccurately attributed to his wife Sandra Whitmore. *Id.* at 1-2.

15 The Second Supplement to the Complaint ("2d. Supp. Compl."), dated April 21, 2012,  
16 included bank statements from the Committee's state account. 2d. Supp. Compl. at 3-18. In this  
17 second supplement, Whitmore made new allegations that the Committee had inaccurately  
18 reported receipts, stating that the Committee's federal bank account records and disclosure

<sup>2</sup> Whitmore attached the following to the First Supplement to the Complaint: (1) bank statements from the Committee's federal account for 2011 that had been provided to him by Hill; (2) minutes of Committee meetings from June 2010 through December 2011; (3) e-mail exchanges between Whitmore, Hill, and Committee Chairman Howie Lind; and (4) written records of contributions from Whitmore. Supp. Compl. at 4-85.

<sup>3</sup> The First Supplement made a related allegation that the Committee made disbursements that "were not approved in the budget" or were "personal," including disbursements for gasoline, meals, tolls, wages, donations, rent, and hotel lodging. Supp. Compl. at 2-3. It appears that the complained of violation is that the Committee made disbursements that are impermissible under the Committee's internal policies. This allegation is outside the Commission's jurisdiction.

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1 reports did not reconcile for several months throughout 2011. 2d. Supp. Compl. at 1. Whitmore  
2 acknowledged, however, that "at year end the FEC account and the Bank account [were] out of  
3 balance by less than \$100.00." 2d. Supp. Compl. at 2.

4 In its Response to the initial Complaint, the Committee contended that the Commission  
5 should not take action against the Committee for under-reporting disbursements, asserting that  
6 Whitmore misunderstood the Commission's requirements for itemizing receipts and that the  
7 Committee had accurately reported all disbursements. Specifically, the Committee asserted that  
8 each of the 91 allegedly "missing" disbursements was not listed in the Committee's FEC reports  
9 because it fell below the threshold for itemization, since only disbursements in excess of \$200  
10 aggregate per recipient per calendar year are required to be itemized. Resp. at 1 (Apr. 16, 2012).  
11 The Committee also noted that while it was not required to itemize each disbursement that fell  
12 under the minimum threshold, these unitemized disbursements were nevertheless accurately  
13 reflected in the total disbursements of each month's amended report. The Committee added that  
14 this information could be verified by comparing Line 7 "Total Disbursements" or Line 21b  
15 "Other Federal Operating Expenditures" on each report's Detailed Summary Page, with total  
16 disbursements on the Committee's spreadsheets (provided in the Complaint itself). *Id.*  
17 Additionally, the Committee explained that it had recently elected a new treasurer, Shak Hill, in  
18 mid-2011, after the prior treasurer's death. As the new treasurer, Hill conducted an internal  
19 review and determined that some receipts and disbursements had not been correctly reported, and  
20 thus he filed amendments to the Committee's disclosure reports for 2011. *Id.* Hill also stated  
21 that the Committee had recently engaged a compliance consultant and instituted internal  
22 procedures to ensure accurate reporting. *Id.* at 2. The Committee did not respond to the

1 allegations that it did not timely file amended Statements of Organization regarding changes to  
2 the Committee's treasurers, bank accounts, and address.

3 In response to the Supplements to the Complaint, the Committee referred back to its  
4 explanations in its initial response. Supp. Resp. at 2 (May 22, 2012). The Committee further  
5 asserted that its internal review, amendments, and subsequent on-time and accurate filing of  
6 disclosure reports have all demonstrated a lack of malfeasance. *Id.* The Committee did not  
7 address the allegations in the Second Supplement to the Complaint regarding differences  
8 between its federal bank account records and its disclosure reports, or the alleged inaccurate  
9 reporting of receipts, other than to note the Complainant's concession that "at year end the FEC  
10 account and the Bank account [were] out of balance by less than \$100.00." *Id.* at 1.

11 **II. Legal Analysis**

12 **A. Reporting of Receipts and Disbursements**

13 Political committees are required to disclose the total amount of all receipts and  
14 disbursements for the reporting period and the calendar year, as well as all disbursements in  
15 certain categories, including expenditures made to meet committee operating expenses and "any  
16 other disbursements." 2 U.S.C. § 434(b)(2), (b)(4). The Act and regulations require that  
17 disbursements be itemized only to the extent that they exceed \$200 in aggregate per recipient per  
18 calendar year. 2 U.S.C. § 434(b)(3)(A), (b)(5)(A); 11 C.F.R. § 104.3(a)(4)(i), (b)(3)(i); *see also*  
19 11 C.F.R. §§ 104.8(a), 104.9(a). Similarly, committees are required to itemize contributions  
20 received in excess of \$200 in aggregate value per contributor per calendar year. 2 U.S.C.  
21 § 434(b)(3)(A); 11 C.F.R. § 104.3(a)(4)(i). All deposits of contributions must be made within 10  
22 days of the treasurer's receipt. 11 C.F.R. § 103.3(a).

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1           Reporting of Disbursements. The available evidence shows that the Committee met the  
2 requirement to properly itemize its disbursements in excess of \$200 in its disclosure reports.  
3 Specifically, a review of the Committee's financial statements attached to the Complaint  
4 confirms that all of the alleged unreported disbursements fell below the itemization threshold.<sup>4</sup>  
5 The facts presented by the Complainant and in the Committee's disclosure reports indicate that  
6 the Committee did not violate the Act or Commission regulations concerning the reporting and  
7 itemization of disbursements as alleged in the Complaint. Despite the foregoing conclusion, the  
8 Committee's response acknowledges that the Committee failed to accurately report its  
9 disbursements in violation of 2 U.S.C. § 434(b). *See Resp.* at 1. The Committee explained that  
10 after an internal review, its new treasurer "determined that some receipts and disbursements had  
11 not been correctly reported." *Id.* In March 2012, prior to the filing of the Complaint, the  
12 Committee filed 20 amended reports covering multiple reporting periods. Since then, it appears  
13 that the Committee has continued its remedial efforts by independently filing additional amended  
14 reports and has complied with Requests for Additional Information from the Reports Analysis  
15 Division by timely filing further amended reports.

16           Reporting of Receipts. In its December 2011 Monthly report, the Committee itemized a  
17 \$250 receipt from the Complainant, Thomas Whitmore, showing an aggregate year-to-date  
18 figure of \$250 for him, and also itemized a \$50 receipt from Sandra Whitmore, showing an  
19 aggregate year-to-date figure of \$250 for her. Committee records and the First Supplement to

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<sup>4</sup> Although Whitmore contends that there was concealment and obfuscation by Hill and the Committee, the attachments to the First Supplement to the Complaint appear to contradict his assertion. Specifically, e-mails from Hill to Whitmore show that Hill provided financial reports when requested, and indicate that Hill willingly provided bank statements to Whitmore from the Committee's federal and state accounts. *Supp. Compl.* at 5-9. Further, the first supplement includes an e-mail from Lind to Committee members detailing efforts to inform the Committee of financial status and activities, including presentations, e-mails, references for members to the Committee's FEC filings, and an explanation that new software difficulties had led to earlier inaccurate figures in Committee reports. *Supp. Compl.* at 14-16.

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1 the Complaint indicate that two of the Whitmore contributions to the Committee were made by  
2 personal checks, in the amounts of \$200 on April 30, 2011, and \$50 on November 19, 2011,  
3 respectively. Compl. at 9, 19; Supp. Compl. at 10. The Committee's December 2011 Monthly  
4 Report reflects that these two contributions by check were attributed to Sandra Whitmore,  
5 although Whitmore contends that they should be attributed to him. The address listed in the  
6 Committee's records and on the FEC disclosure report is the same for both Thomas and Sandra  
7 Whitmore. There is no indication from Whitmore or the Committee as to whether the two  
8 contributions that Whitmore contends were incorrectly attributed to his wife were from a sole or  
9 joint checking account held by both of them. The Complaint and Supplements did not provide  
10 copies of the checks, and the Committee did not address the issue in its responses. Thus, we  
11 have insufficient evidence to determine whether the contributions were properly attributed.  
12 However, in light of the *de minimis* amount at issue, we believe further use of Commission  
13 resources is unwarranted.

14 As to Whitmore's more general allegations about the Committee's reporting of receipts,  
15 an examination of the Committee's disclosure reports and the bank statements and financial  
16 documents provided by Complainant indicates that some receipts were misreported. In  
17 particular, it appears that some contributions were not deposited in a timely manner. The  
18 Committee's bank statements appear to show that the Committee deposited contributions into its  
19 federal account at regular intervals. Because of this practice, at times the receipt date and deposit  
20 date of some contributions occurred in different months, thus explaining the lack of month-to-  
21 month reconciliation complained of by Whitmore. For this reason, there are differences between  
22 certain monthly statements of the Committee's federal account and its FEC filings for the same  
23 month. In sum, it appears that the total difference between the reported cash on hand and the

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1 bank statements for all of 2011 was approximately \$80.00. The total difference between  
2 reported receipts and bank statement deposits for all of 2011 appears to be \$571.72. The  
3 Committee's bank records, internal accounting spreadsheets, and FEC filings indicate that a  
4 small number of contributions may not have been properly deposited within ten days of receipt  
5 as required by 11 C.F.R. § 103.3(a). Nevertheless, due to the *de minimis* dollar amount of the  
6 apparent reporting discrepancies, we believe further use of Commission resources is not  
7 warranted.

8 **B. Statement of Organization**

9 The Act and Commission regulations require that Statements of Organization include,  
10 among other information, the name and address of the committee, the name and address of the  
11 treasurer, and a listing of all banks used by the committee. *See* 2 U.S.C. § 433(b); 11 C.F.R.  
12 § 102.2(a)(1). The Act requires that any change in information previously submitted in a  
13 political committee's Statement of Organization shall be reported no later than 10 days after the  
14 date of the change, *see* 2 U.S.C. § 433(c), and Commission regulations require that any such  
15 change shall be reported by filing an amended Statement of Organization. 11 C.F.R.  
16 § 102.2(a)(2).

17 The Committee appears to have changed treasurers at least twice since 2010 without  
18 updating its Statement of Organization. Documentation provided by Whitmore indicates that the  
19 Committee's prior treasurer (Proctor) held the position from at least May 2010 until his death in  
20 June 2011. *Supp. Compl.* at 48-49, 53-54, 57-58, 62-63, 68-69, 76-77. And Hill admits that he  
21 assumed the role of treasurer after Proctor's death in June 2011. *Resp.* at 1. The Committee  
22 filed an Amended Statement of Organization on June 20, 2009, designating Melinda Conner as  
23 treasurer. The Committee never filed an amended Statement of Organization naming Proctor as



1 treasurer upon his appointment in May 2010, and it did not file an Amended Statement of  
2 Organization reporting that Hill was the new treasurer until February 1, 2012. Supp. Compl. at  
3 1, Resp. at 1. The Committee filed an accurate and current Amended Statement of Organization  
4 on February 1, 2012. However, pursuant to 2 U.S.C. § 434(c) and 11 C.F.R. § 102.2(a)(2), the  
5 Committee should have filed an Amended Statement of Organization when Proctor took office  
6 as treasurer in May 2010, and again when Hill took office as treasurer in June 2011, rather than  
7 in February 2012.

8 To the extent that the Complaint alleges that the Committee changed its bank account and  
9 address without timely amending its Statement of Organization, we note that the Complaint does  
10 not include any facts as to when such changes occurred, or even the nature of such changes. We  
11 further note that the Complaint concedes that any such changes were, ultimately, properly  
12 disclosed, even if not in a timely manner.

13 C. Conclusion

14 In sum, the facts presented by the Complainant and in the Committee's disclosure reports  
15 indicate that the Committee did not violate the Act or Commission regulations concerning the  
16 reporting and itemization of disbursements as alleged in the Complaint. Despite the foregoing  
17 conclusion, the Committee's response acknowledges that the Committee failed to accurately  
18 report its receipts and disbursements in violation of 2 U.S.C. § 434(b). The facts also indicate  
19 that the Committee appears to have reported improperly its cash on hand and failed to amend its  
20 Statement of Organization in a timely manner. But, in light of the loss of the Committee's  
21 treasurer, coupled with the *de minimis* nature of the apparent violations and the Committee's  
22 continuous reporting and supplemental amendments, the Commission determined that further

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- 1 enforcement action is unnecessary, and exercised its prosecutorial discretion and dismissed this
- 2 matter pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985).

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